



***In the
Missouri Court of Appeals
Western District***

STATE OF MISSOURI,	)	
	)	
Respondent,	)	WD87222
	)	
V.	)	OPINION FILED:
	)	OCTOBER 21, 2025
CHARLES F. MILLER,	)	
	)	
Appellant.	)	

Appeal from the Circuit Court of Jackson County, Missouri
The Honorable Bryan Round, Judge

Before Division One: Gary D. Witt, Presiding Judge, Alok Ahuja, Judge and Karen King
Mitchell, Judge

Charles F. Miller appeals the judgment of the Circuit Court of Jackson County, Missouri ("trial court"), convicting him, after a jury trial, of one count of felony murder, section 565.021;¹ one count of unlawful use of a weapon, section 571.030; one count of unlawful possession of a firearm, section 571.070; and two counts of armed criminal action, section 571.015. On appeal, Miller claims the trial court erred in admitting surveillance video footage because the State failed to establish a proper foundation for

¹ All statutory references are to the Revised Statutes of Missouri (2016) as updated by supplement.

the evidence under the "silent witness theory." We affirm the judgment and sentence of the trial court.

Factual and Procedural Background

Miller does not challenge the sufficiency of the evidence. Viewed in the light most favorable to the judgment the evidence established the following: On July 16, 2022, police were notified of a crashed white Chevy Tahoe near 8200 Blue Ridge Boulevard by a neighbor. In the Tahoe was the body of a man who had been shot twice in the head, apparently through the car's passenger's side window. Multiple apparent bullet holes were observed in the passenger's side of the vehicle. Another resident in the area had reported hearing gunshots at around midnight the night before. Police found that the Tahoe had passed by a license plate reader ("LPR") at 12:44 a.m. that morning, several blocks from where it was found. Two seconds later, a silver Chevy Malibu followed the Tahoe past the same LPR.

Based on the license plate of the Chevy Malibu, the police were able to determine that the vehicle was registered to J.S. ("Girlfriend").² Police also located the dealership that sold the Malibu, and the dealership had a GPS tracker on it that showed the vehicle to be located at a Fast Stop gas station and convenience store. Police interviewed Girlfriend, who told them that in the early morning hours of July 16, she was with Miller;

² Per Missouri Supreme Court Operating Rule 2.02(c)(3), we do not list names of individuals who are not parties.

the two had been drinking and were going to pick up Girlfriend's daughter from work.³ Girlfriend stated that she had fallen asleep in the passenger's seat and awoke when she heard a loud noise and felt a burn on her leg. Miller was driving and holding a gun; he was agitated and accused Girlfriend of "set[ting] him up." Miller was looking for his phone and then for Girlfriend's phone, and while he was distracted he ran into a concrete barrier on the highway. The Malibu exited the highway and pulled into a gas station at 12:50 p.m., the driver got out of the car holding a rifle and then got back into the car and drove away. At trial, Miller denied it was him driving the Malibu when it pulled into that gas station. A few minutes later, at 12:55 p.m., Miller pulled into the Fast Stop gas station driving the Malibu. Security video from multiple cameras at the Fast Stop captured the events at that location. Miller exited the driver's side of the vehicle and went into the convenience store, and Girlfriend got out of the passenger's side of the vehicle and walked off in the other direction, eventually walking to her mother's house. In still photos taken from the surveillance video, Girlfriend identified: Miller, the gun, her car, the gas station where they stopped, and her phone in Miller's hand. Miller remained at the Fast Stop talking on his cell phone for over an hour after Girlfriend left on foot.

A private security guard working for the Fast Stop observed a gun inside the vehicle on the floorboard. After notifying police that they had what appeared to be an abandoned car with a weapon inside, the private security guard gained access to the

³ Girlfriend testified at trial that she did not remember anything about the events occurring on July 16, 2022. A video of her interview with police soon after the shooting was played for the jury wherein she provided details of the events of July 16.

vehicle using a "lockout kit" and removed and secured the rifle before relocking the vehicle. Later that morning a black pickup truck drove into the Fast Stop and a person got out of the passenger's side, went to the Malibu, broke out the passenger's side window, and leaned inside the car before returning to the truck and leaving.

Police went to the Fast Stop and found Girlfriend's Malibu still parked at the gas pump, abandoned. There was damage to the front end of the car, and the vehicle was locked and unoccupied. Several spent shell casings were found on the floorboard of the Malibu. Testing revealed that these shell casings had been fired from the gun the security guard had removed from the Malibu. A bullet fragment consisting of its copper jacket was retrieved during Victim's autopsy and was also determined to have been fired from the gun recovered from the Malibu.

Police obtained security footage from the Fast Stop. Later in the afternoon on July 16, a Forensic Specialist ("FS") with the Kansas City Police Department went to the Fast Stop to "recover over [twelve] hours of video from multiple cameras." It took a considerable amount of time to download the footage, and the FS:

secured the thumb drive while the video was being downloaded, as well as the room—it was secured with evidence tape, and there were notes left on the screen to do not touch, as well as other markings. And we left the scene until the estimated time it would take to download was going to be completed. And then we returned, verified that it had been exported and left the scene.

FS also testified that the video storage was located in a back room of the store, that he took "additional steps to further secure" the video footage, and clarified that he used an external hard drive and not a thumb drive to download the footage, because it has a larger

storage capacity. FS testified that he did not observe any indications that the video footage had been subject to tampering.

Miller's trial counsel objected to the admission of the video footage, stating:

There has been no testimony that this video is in the same format as it was recorded in or if it was adapted to be played on a regular video player. We don't know who all goes into that room where the recording system is on a daily basis and this witness said he even left that room for hours when it was downloading.

The trial court admitted the video footage over counsel's objection finding "there's been a sufficient foundation laid for me to admit it." The video footage largely corroborated Girlfriend's statement to the police in that it showed Miller driving the Malibu, stopping at the convenience store and going in with Girlfriend's cell phone, and Girlfriend walking away from the Fast Stop on her own. Miller acknowledged that he was the person driving the Malibu when it pulled into the Fast Stop and it was him outside the Fast Stop talking on a cell phone.

The jury found Miller guilty on all charges, and judgment was entered; Miller was sentenced as a prior and persistent offender to two twenty-five-year prison sentences to be served concurrently to each other and consecutively to two five-year prison sentences, for a total of thirty years. Miller filed a post-trial motion, alleging that the video surveillance footage from the Fast Stop was improperly admitted "due to debate over insufficient foundation, if not a violation of chain of custody." This appeal follows.

Standard of Review

If preserved, a claim that evidence was improperly admitted is reviewed for an abuse of discretion. *State v. Sander*, 682 S.W.3d 85, 96 (Mo. App. W.D. 2023). A trial court has broad discretion to admit or exclude evidence at trial, and an abuse of that discretion will be found only when the trial court's ruling is "clearly against the logic of the circumstances and is so unreasonable as to indicate a lack of careful consideration." *Id.* Reversal of the conviction is warranted only if an error is so prejudicial that it deprived the defendant of a fair trial; in other words, if there is a reasonable probability that the error affected the outcome of the trial. *Id.*

Analysis

Miller alleges on appeal that the trial court abused its discretion by admitting the Fast Stop video evidence because the State failed to lay a sufficient foundation for the evidence under the "silent witness theory." We disagree.

The State argues that this court need not address this claim, or, if we address it, we need only review for plain error because the issue was not preserved at trial. When a party has objection to evidence, he must object at trial when the evidence is offered, unless the party has been granted a continuing objection or it is understood by all parties and the trial court that the party opposing the evidence has not repudiated his prior objection. *State v. O'Neal*, 392 S.W.3d 556, 562 (Mo. App. W.D. 2013). "A general objection of lack of foundation does not call to the court's attention the aspect of the foundation which is considered lacking." *State v. McFadden*, 369 S.W.3d 727, 753 (Mo. banc 2012) (citation modified). The objection must be renewed in a post-trial motion for

a new trial on the same grounds as it was objected to at trial. *State v. Gaines*, 316 S.W.3d 440, 451 (Mo. App. W.D. 2010). Although Miller objected at trial to the video evidence's "foundation," there was no mention of the "silent-witness theory" on which his point on appeal is based. Rather, the objection was that there had been "no testimony that this video is in the same format as it was recorded in or if it was adapted to be played on a regular video player. We don't know who all goes into that room where the recording system is on a daily basis and this witness said he even left that room for hours when it was downloading." In the motion for new trial, the "renewed" objection was merely that the evidence was erroneously admitted "due to debate over insufficient foundation, if not a violation of chain of custody." At best, Miller's objection at trial challenged only two aspects of the foundation required by the "silent witness" theory – whether the exhibit being offered at trial had been altered from its original form; and whether the recording was "sufficiently protected from tampering by third parties." Miller did not argue that the State had failed to establish any of the other elements of the silent witness theory. Accordingly, Miller's arguments concerning other aspects of the required foundation for silent-witness evidence can be reviewed only for plain error. *State v. Johnson*, 284 S.W.3d 561,568 (Mo. banc 2009).

In *State v. Moyle*, this Court adopted the "silent witness" theory as to the admissibility of video evidence that is unaccompanied by a witness who saw the events as they unfolded and can attest that the video evidence accurately reflects the events as they occurred. *State v. Moyle*, 532 S.W.3d 733, 736 (Mo. App. W.D. 2017). Under this theory, the video being offered as evidence "is considered a silent witness which speaks

for itself, and is substantive evidence of what it portrays independent of a sponsoring witness.” *Id.* (citation modified).

In determining whether silent-witness video evidence is supported by sufficient foundation, trial courts should consider:

1) whether the camera, recording system and storage method were working properly at the time of the events depicted; 2) the historic reliability of the camera, recording system and storage method used and whether they are sufficiently protected from tampering by third parties; and 3) whether the recording in the medium presented at trial is a fair and accurate portrayal of the recording in its original form and has not been altered, tampered with or modified (or that any alteration or modification is sufficiently explained and does not affect the reliability or accuracy of the evidence).

Id. at 738.

In this case, H.D., an employee of Fast Stop, testified that he worked at the Fast Stop convenience store, that the store had a surveillance system with multiple cameras both inside and outside the store, that the recorded footage was stored on a computer in the back room that was secure and only accessible to employees, that the system was operational and working on July 16, 2022, and that the footage was not able to be tampered with or altered in any way. FS testified that, while he was downloading the surveillance footage onto a hard drive, he secured the room with evidence tape and left notes that the computer system was not to be touched, and he also testified that he had not observed any indications that the footage had been subject to tampering. F.S. also testified that he “collect[s] video exactly as it’s recorded and stored” in the video system.

No one with any reason to alter the footage would have had access to it, and the video evidence corroborated Girlfriend’s statement to the police as well as other video

evidence from another convenience store, the physical evidence of the gun and the vehicle being found at the Fast Stop gas station, and the security guard's testimony. The evidence in this case satisfies the threshold to establish a foundation for the Fast Stop video footage as silent-witness evidence. Accordingly, the trial court did not abuse his wide discretion in allowing the evidence. There was no error, plain or otherwise.

Miller's point on appeal is denied.

Conclusion

For all of the above-stated reasons, we affirm the judgment and sentence of the trial court.

A handwritten signature in black ink, appearing to read 'G. D. Witt', is written over a horizontal line.

Gary D. Witt, Presiding Judge

All concur